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October 8, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RECEIVED
OCT 12 1993

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

FCC MAIL BRANCH

Re: Amendment of Section 73.202(b), Table of Allotments, FM Broadcasst Stations, Halfway and Ozark, Missouri — MM Docket No. 93-186/RM-8258

Our File No. 1704.026

Dear Ms. Searcy:

Transmitted herewith, on behalf of Ozark Mountain Broadcassting, Inc., is an original and four (4) copies of OPPOSITION OF OZARK MOUNTAIN BROADCASTING, INC. TO REPLY COMMENTS OF MISSOURI RADIO, INC. for immediate filing in the above referenced proceedings.

Should there be any questions regarding this matter please do not hesitate to contact the undersigned.

Yours truly,

DOUGLAS, LYNCH, MUNTON & HAUN, P.C.

By 
Gary W. Lynch

GWL
Enclosure

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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OCT 11 2 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Halfway and Ozark, Missouri)

MM Docket No. 93-186
RM-8258

RECEIVED BY

OCT 12 1993

To: Chief, Allocations Branch
Mass Media Bureau

FCC MAIL BRANCH

OPPOSITION OF OZARK MOUNTAIN BROADCASTING, INC TO REPLY
COMMENTS OF MISSOURI RADIO, INC.

Ozark Mountain Broadcasting, Inc. ("OMB") opposes the Reply Comments filed herein by Missouri Radio, Inc. ("MRI") for the reason that the reply comments do not, in fact, reply to the allegations raised by OMB in its Reply Comments. In support of this position OMB states:

1. MRI does not deny any of the allegations made by OMB. Actually, MRI's Reply comments support OMB's position that the counterproposals filed by John Borders, d/b/a Lake Broadcasting ("LB") and by MRI are nothing more than an abuse of the Commission rules to extort ownership of KZPF-FM from OMB or in the alternative, to coerce OMB to lease KZPF-FM to John Borders to gain a monopoly on the Springfield, Missouri radio market. MRI admits in ¶4 of its Reply Comments that, "an accusation of deliberate abuse of Commission processes is a very serious matter which needs to be addressed." Yet, John Borders d/b/a Lake Broadcasting has not responded to OMB's allegations within the time allowed by the

Commission. The Commission can only assume that John Borders admits each and every allegation made by OMB in its Reply Comments. By not responding, John Borders has admitted to the Commission that he has willfully used his son to abuse Commission rules in order to gain control of KZPF-FM.

2. As admitted by MRI, John Border's son, J. Gregory Borders is a police officer living in Arlington, Texas. This police officer has never worked or been involved in a small radio market as admitted in ¶6 and footnote 6 of MRI's reply comments. Yet, MRI would have the Commission believe that out of the thousands and thousands of small towns in the United States having a population of 1,000 people or less, J. Gregory Borders chose a small town, almost six hundred miles away from his home, for a small radio station which, just coincidentally (he would have the Commission believe), would block an upgrade to a station which would directly compete in the same radio market in which "J. Gregory Borders' family owns two¹ stations." (Emphasis added.) See ¶6, MRI Reply Comments.

3. MRI argues in its Reply Comments, as it did in its original Counterproposal, that it would have the Commission put blinders on and look solely at the issue of first local service to Humansville, Missouri, in determining the public interest. OMB admits that generally, and in most instances, first local service advances the public interest over an upgrade of an existing station. However, if the Commission does as MRI suggests, and ignores all of the clear facts showing the actual abusive and improper motive behind the request for allocation of a first

¹ Actually, J. Gregory Borders' family, a/k/a John Borders, controls three (3) radio stations in the Springfield, Missouri radio market. John Borders' company, Sunburst II, Inc. is the licensee of KGBX-FM and KGMV-AM. As indicated in OMB's Reply Comments, John Borders also exercises control and, on occasion, ownership of KGMV-FM.

service, it is not serving the public interest. Can the public interest be served in any manner by allowing a "family of career broadcasters," ¶6, MRI Reply Comments, to misuse a request for first service to limit competition in the marketplace? Can the public interest be served in any manner by allowing a "family of career broadcasters" to hide behind a request for first service to extort control of a station and thereby attempt to gain a monopoly in a market in which it already owns two (2) stations and exercises operating control over a third?

4. MRI, in its Reply Comments has demonstrated that it is not truly interested in first service to Humansville, Missouri. OMB alleged in its Reply Comments that J. Gregory Borders had never personally been to Humansville, Missouri. *See* ¶16, OMB Reply Comments. MRI did not deny this allegation. OMB alleged that MRI and J. Gregory Borders had never ascertained that Humansville, Missouri, could support a local broadcast facility. *Id.* MRI did not deny this allegation. OMB alleged that MRI and J. Gregory Borders had not ascertained whether Humansville, Missouri, needs a local broadcast facility. *Id.* MRI did not deny this allegation. OMB alleged that the sketchy information given by MRI to support an allotment to Humansville, Missouri, could have been obtained from a road atlas or from a local library. *Id.* MRI did not deny this allegation. By making these allegations OMB invited MRI to fill these holes in its proposal by providing solid and substantial information in its Reply Comments showing the feasibility of a first local service in Humansville, Missouri. Instead, MRI chose to make glib comments about the "kidnapping of the Lindburgh baby," Footnote 3, MRI's Reply Comments, rather than addressing the serious questions and allegations raised by OMB.

5. In its Reply Comments, MRI had the opportunity to explain that its principal, J. Gregory Borders, had not had any conversations with John Borders about the nature of MRI's

proposal and its affect on the other stations owned by the Borders family. MRI chose not to do so. MRI had the opportunity to explain that J. Gregory Borders and John Borders had not had any conversations about John Borders' attempt to purchase KZPF-FM. MRI chose not to do so. MRI had the opportunity to explain that J. Gregory Borders and John Borders had not had any conversations regarding how MRI's request for a first service allocation in Humansville, Missouri, would block a potential competitor to John Borders' stations in the Springfield, Missouri radio market. MRI chose not to do so. In ¶6 and again in ¶8 MRI refers to the "saturated Springfield market." It is reasonable to conclude that J. Gregory Borders obtained the information to conclude that the Springfield, Missouri radio market is "saturated" from his "family of career broadcasters," *i.e.* John Borders, his father. A father who happens to control three (3) radio stations in that same "saturated" market. A father who tried unsuccessfully, before the MRI and LB Counterproposals were filed, to purchase or lease KZPF-FM so that he could control a fourth radio station in that same "saturated" market. A father who on September 22, 1993, after OMB filed its Reply Comments, but before MRI's and LB's Reply Comments were due, made a trip from his home in Dallas, Texas to meet in Bolivar, Missouri with Gary W. Lynch ("Lynch"), the principal in OMB, to again express his desire to purchase or lease KZPF-FM if it was upgraded to class C-2.

6. In the meeting between John Borders and Lynch on September 22, 1993, Lynch told Borders that no discussions would be held with him about Borders' purchase or lease of KZPF-FM so long as Borders was attempting to block the upgrade in violation of Commission rules.

7. Ozark, Missouri, is one of the fastest growing areas in Southwest Missouri. The original request by OMB to upgrade to class C-2 was made in the belief that constructing KZPF-FM as a C2 would allow KZPF-FM to better serve this growing area and meet the public's growing needs. It is quite obvious that John Borders does not care about the public interest, but only in using and abusing the system to protect his private interests. His actions have made it quite clear that if he can not control of KZPF-FM, no one will — the public interest be dammed.

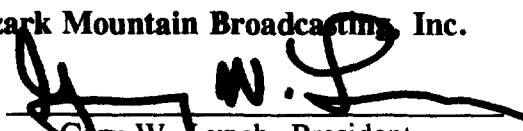
8. J. Gregory Borders by conspiring with his father and taking these actions to protect his family's radio interests in the Springfield, Missouri radio market is no less guilty than his father of abusing the Commission's rules and the allocation process.

Because of the above and foregoing and the matters set forth in OMB's Comments and Reply Comments, it is clear that the Commission should adopt the proposal set forth in the Notice of Proposed Rule Making DA 93-729 (released July 13, 1993) and that the counterproposals of Lake Broadcasting and Missouri Radio, Inc. should be dismissed as having been prosecuted by John Borders and J. Gregory Borders in violation of the Commission rules and as an abuse of the allocation process.

Respectfully submitted,

Ozark Mountain Broadcasting, Inc.

by

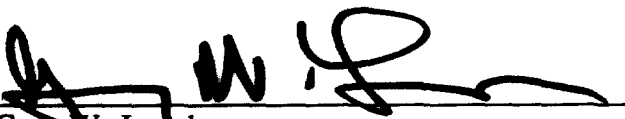

Gary W. Lynch, President

111 W. Broadway
P.O. Box 117
Bolivar, MO 65613
(417) 777-1596

Dated: October 8, 1993


CERTIFICATION

Gary W. Lynch, of legal age and being duly sworn upon his oath states that he is the President of **Ozark Mountain Broadcasting, Inc.** and that to the best of my knowledge, information and belief the factual matters set forth in the above Reply Comments are true and accurate.



Gary W. Lynch

Subscribed and sworn to before me this 8th day of October, 1993.



Shontel Cunningham

Notary Public

SHONTEL CUNNINGHAM, NOTARY PUBLIC
NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES 7-28-95

My Commission Expires: _____

CERTIFICATE OF SERVICE

I, Gary W. Lynch, President of **Ozark Mountain Broadcasting, Inc.**, hereby certify that I have this 8th day of October, 1993, mailed by first class United States mail, postage prepaid, copies of the foregoing "**OPPOSITION OF OZARK MOUNTAIN BROADCASTING, INC TO REPLY COMMENTS OF MISSOURI RADIO, INC.**" to the following:

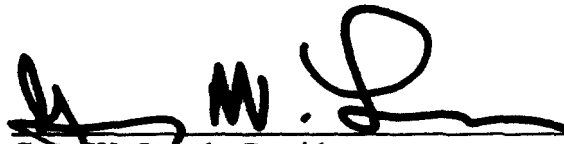
William J. Pennington, III
Attorney for KYOO Broadcasting Company
P.O. Box 2506
Pawleys Island, SC 29585

Lake Broadcasting
John Borders, Proprietor
5930 L.B.J.
Suite 400
Dallas, TX 75240

**Missouri Radio, Inc.
J. Gregory Borders, President
1909 Columbia Drive
Richardson, TX 75081**

**Demaree Media, Inc.
Station KFAY-FM
P.O. Box 878
Fayetteville, AR 72712**

**Hendren-McChristian Communications
Station KXBR
Rt. 5, Hwy. 72 East
Gravette, AR 72736**



**Gary W. Lynch, President
Ozark Mountain Broadcasting, Inc.**